A.F.R. (33)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक CRA NO 202 सन् 2002

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

APPELLANTS:

1. Gyan Singh, Son of Chainsai Kawar, Age 30 years.
2. Jhakadi alias Muneshwar, Son of Chainsai Kawar, Age 29 years.

Both are cultivator, resident of Village Rajpuri, P.S. Lakhanpur, District Sarguja (C.G.).

-Versus-

RESPONDENT:

State of Chhattisgarh, Through P.S. Lakhanpur.

(Criminal appeal under Section 374 (2) of the Cr.P.C.)

D.B.: - Hon'ble Shri L.C. Bhadoo &
Hon'ble Shri Sunil Kumar Sinha, JJ.

26-7-2007:-

Shri J.S. Baraik, counsel for the appellants.

Shri D.K. Gwalre, Additional Public Prosecutor for the State/ respondent.

Oral judgment dictated on *Dais*.

L.C. Bhadoo, J.

This appeal is directed against the judgment of conviction and order of sentence dated 31-1-2002 passed by the 1st Additional Sessions Judge, Ambikapur in S.T. No.319/2000 whereby learned Additional Sessions Judge after holding the accused/appellants guilty for commission of

GRPRJ —

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offence under Section 302 read with Section 34 of the I.P.C., for committing the murder of Kan Rai, sentenced each of the accused to undergo imprisonment for life & to pay a fine of Rs.1,000/-, in default of payment of fine to further undergo R.I. for 6 months.

The case of the prosecution, in brief, is that on 24-8-2000 at about 2.30 p.m. Nirmal Kumar was at his residence, at that time, Kenda Kumhar came to his house and informed him that Kan Rai is being beaten, therefore, he along with Kenda Kumhar went to Sita Jhorikha Khar agricultural field, he saw from 100 meter and shouted towards the accused persons as to why they are beating Kan Rai, at that time accused Jhakadi was holding lathi in his hand. He stopped attacking Kan Rai. Accused Gyan Singh was attacking with spade. After seeing them when they rushed towards them, accused Gyan Singh and Jhakadi ran away. The matter was reported by Nirmal Kumar under Ex.P/1 in the Police Station Lakhanpur. Station House Officer, Police Station registered the crime under Section 302 read with Section 34 of the I.P.C. Merg intimation Ex.P/2 was given by Nirmal Kumar. The investigating officer left for scene of occurrence and prepared inquest Ex.P/4 on the body of deceased Kan Rai. Halka Patwari prepared the site plan Ex.P/5. The investigating officer seized plain soil and blood stained soil from the place of occurrence under Ex.P/6. Sleepers of Kan Rai were seized under Ex.P/7. One bamboo stick was seized from the place of occurrence. While in the police custody, accused Gyan Singh gave memorandum Ex.P/8, in pursuance of that, spade was seized at his instance under Ex.P/9. While in the police custody, accused Jhakadi gave memorandum

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Ex.P/10, in pursuance of that, at his instance lathi was seized under Ex.P/11. Broken pieces of lathi were seized under Ex.P/12. The body of the deceased was sent for post-mortem examination under Ex.P/23-A to the Primary Health Centre, Lakhanpur where Dr. Vedram Singh (PW-10) conducted post-mortem and prepared post-mortem report Ex.P/23. He opined that cause of death was excessive haemorrhage due to rupture of lung.

After completion of the investigation, charge sheet was filed against the accused persons in the Court of Chief Judicial Magistrate, Ambikapur, who in turn committed the case to the Sessions Judge Ambikapur from where learned 1st Additional Sessions Judge received the case on transfer.

The prosecution in order to establish the charge against the accused persons examined 13 witnesses. Statements of the accused persons were recorded under Section 313 Cr.P.C. in which they denied material appearing against them in the prosecution evidence, stated that they are innocent and have been falsely implicated in the crime. However, they examined DW-1 Bachan Ram in their defence.

Learned 1st Additional Sessions Judge after hearing learned counsel for the respective parties convicted and sentenced the accused persons as aforesaid.

We have heard Shri J.S. Baraik, counsel for the appellants and Shri D.K. Gwalre, Additional Public Prosecutor for the State/respondent.

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आदेश पत्रक (पूर्वानुबद्ध)

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Learned counsel for the accused/appellants has not disputed homicidal death of the deceased. Moreover, PW-3, wife of the deceased namely, Sukwaro Bai has stated that on the fateful day she saw that accused/appellants namely, Gyan Singh and Jhakadi were attacking her husband in the agricultural field. Jhakadi was attacking with lathi whereas, Gyan Singh was attacking with spade, as a result of which her husband sustained injuries on various parts of the body. Blood started oozing out of the ear and head. The above ocular evidence is corroborated by the medical evidence of PW-10 Dr. Vedram Singh who has stated that on 25-8-2000 he conducted the post-mortem on the body of the deceased. There were 5 lacerated wounds on the head, near ear, left eye, right shoulder and scapular region. There were bruises on the back side of the deceased. On opening the body, it was found that 3rd, 5th and 6th ribs of the left side were fractured. Both lungs were ruptured. Cavity of the chest was full of blood. Injuries were ante mortem in nature and death was homicidal in nature. Report is Ex.P/23. In view of the above ocular and medical evidence, it is established that death of the deceased was homicidal in nature.

As far as involvement of the accused/appellants in crime in question is concerned, learned counsel for the accused/appellants argued that in this case all the witnesses except PW-3 Sukwaro Bai, wife of the deceased, have turned hostile. Sukwaro Bai is an interested witness being wife of the deceased. In fact, she had not witnessed the incident. She reached after the incident took place. Therefore, on the sole

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testimony of interested witness the accused/appellants have wrongly been held guilty.

On the other hand, learned counsel for the State supported the judgment of the trial Court.

Having heard learned counsel for the parties, we have perused evidence. It is true that in this case eyewitness PW-1 Nirmal Kumar and PW-2 Dhaluva have turned hostile and they have not supported the prosecution case. As far as Sukwaro Bai is concerned, admittedly, she is wife of the deceased and she has claimed herself to be eyewitness. Being sole witness as also wife of the deceased her testimony has to be scrutinized with care and circumspection in order to ascertain as to whether her testimony is worth reliance and inspire confidence of the Court.

As far as law relating to relative witness is concerned, in number of cases the Apex Court has held that testimony of relative witness cannot be rejected merely on the ground that he is an interested witness, but evidence of such witness has to be scrutinized with care and circumspection.

The Apex Court in the matter of **Rizan and another vs. State of Chhattisgarh, through the Chief Secretary, Govt. of Chhattisgarh, Raipur**, reported in **AIR 2003 SC 976**, in para 6, held that "the relationship is not a factor to affect credibility of a witness. It is more often than not a relation would not conceal actual culprit and make allegations against an

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innocent person. Foundation has to be laid if plea of false implication is made. In such a case, the Court has to adopt a careful approach and analyze evidence to find out whether it is cogent and credible."

Relying upon the decision of the Apex Court in **State of U.P. Vs. Paras Nath Singh and others AIR 1973 SC pg. 1073**, the Division Bench of the Kerala High Court also held in the matter of **Sahadevan Rajan and others vs. State of Kerala 1992 Cri.L.J. 2049** that "the straightforward and trustworthy evidence of relations of the deceased need not corroboration for sustaining the conviction. Such evidence cannot be discarded on the sole ground of interestedness in the prosecution case."

In the case of **Namdeo Vs. State of Maharashtra**, reported in **2007 AIR SCW 1835**, the Apex Court held that "a witness who is a relative of deceased or victim of the crime cannot be characterized as 'interested'. The term 'interested' postulates that the witness has some direct or indirect 'interest' in having the accused somehow or other convicted due to animus or for some other oblique motive." The Apex Court also observed that a close relative cannot be characterized as an 'interested' witness. He is a 'natural' witness. His evidence, however, must be scrutinized carefully. If on such scrutiny, his evidence is found to be intrinsically reliable, inherently probable and wholly trustworthy, conviction can be based on the 'sole' testimony of such witness. Close relationship of witness with the deceased or victim is no ground to reject his evidence. On the contrary, close relative of the deceased would normally be most reluctant to spare the real culprit and falsely implicate an innocent one. The Apex Court also referred to the decision rendered in the matter of

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आदेश पत्रक (पूर्वानुबद्ध)

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Harbans Kaur and another vs. State of Haryana 2005 AIR SCW 2074, in which, it was held that there is no proposition in law that relatives are to be treated as untruthful witnesses. On the contrary, reason has to be shown when a plea a partiality is raised to show that the witnesses had reason to shield the actual culprit and falsely implicate the accused. The Apex Court further ruled that the testimony of the solitary witness can be basis for conviction. Neither the legislature nor the judiciary mandates that there must be particular number of witnesses to record an order of conviction against the accused. Criminal Justice system has always laid emphasis on value, veracity and quality of evidence rather that on quantity, multiplicity or plurality of witnesses. It is, therefore, open to a competent Court to fully and completely rely on a solitary witness and record conviction. Conversely, it may acquit the accused in spite of testimony of several witnesses if it is not satisfied about the quality of evidence. The bald contention that no conviction can be recorded in case of a solitary eye-witness, therefore, has no force and must be negatived.

In the light of the above principle laid down by the Apex Court, if we scrutinize the evidence of PW-3 Sukwaro Bai, she has stated that on the fateful day her husband after taking lunch took cow to the field for grazing. When he was in the field and cow was grazing, one Gudia and one girl came and informed that accused Gyan Singh and Jhakadi are attacking her husband, therefore, she rushed towards the field and saw that accused Gyan Singh and Jhakadi were attacking her husband with spade and lathi. After seeing her, Gyan Singh said that if she will come close, she will also be attacked. She raised cries on which Nirmal, Kenda, Ram

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Bai, Jagat, Keebar and Rambeechar came on the scene. When Nirmal and Kenda asked the accused persons as to where they are running, the accused persons ran away towards the north side. She saw that her husband sustained injuries on the ribs, back, leg, head and mouth. Her husband was taken near Peepal tree, he was saying that he will not survive, as Gyan Singh and Jhakadi have attacked him, therefore, he should be taken to the police station. Thereafter, Jagat came, who brought a cot, on that Kan Rai was taken towards the road. One jeep was brought in order to take her husband to the police station. By the time her husband was put in the jeep, he died. In cross-examination, she has stated that field was in their possession. There was dispute regarding agricultural field between the accused persons and her husband. If the accused persons have obtained any decree, she is not aware. The land was in their possession whereas, the accused persons obtained decree in the name of grandfather, but they had not given possession. This witness has withstood cross-examination of the defence counsel. In cross-examination, defence has not been able to elicit any circumstance which discredit evidence of this witness regarding her presence or witnessing the crime. There is nothing in her cross-examination to establish that distance of the place of occurrence from her residence was so much that it was not possible for her to reach the place after receiving information regarding assault being made by the accused persons on her husband. Therefore, argument advanced by learned counsel for the accused/appellants is without foundation. There is nothing in cross-examination of this witness to show that she had not witnessed the crime. It is true that PW-1 Nirmal Kumar and PW-2 Dhaluva have turned hostile, but testimony of this

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witnesses is consistent. Moreover, first information report was lodged by PW-1 Nirmal Kumar, in that first information report, it has been categorically mentioned that the accused persons had attacked the deceased. The distance between the place of occurrence and the police station is 5 km, incident took place at 2.30 p.m. and on the same day within a period of 2 hours 15 minutes first information report was lodged in the police station Lakhanpur. In the said report, names of the accused persons, weapons with which they attacked the deceased, have been specifically mentioned, therefore, first information report supports the version of PW-3 Sukwaro Bai. Therefore, we are of the considered opinion that as far as finding of the trial Court regarding complicity of the accused persons in the crime in question is concerned, it is fully established.

Learned counsel for the accused/appellants argued that it is admitted position that there was dispute between the parties regarding agricultural field. The accused persons obtained decree in their favour regarding agricultural field on which the deceased had possession.

As per the evidence of DW-1 Bachan Ram, process server of the District Court, Ambikapur, he has categorically stated that in pursuance of the decree regarding possession of the land in Civil Suit No.33-A/77 he went on the spot, the possession was handed over, at that time, Kan Rai was not present on the site. Therefore, there was dispute regarding land between the parties. The deceased was not handing over the possession to the accused party. On the fateful day, the accused persons went to the disputed field where the deceased was grazing cow. There they attacked him. Injuries inflicted by the accused persons, as per the medical

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evidence, were on head, face and on various parts of the body. All those injuries were found to be simple except chest injury, beneath that injury, ribs were found fractured. Unfortunately, facture of ribs proved fatal and they entered lungs. Lungs were punctured. The deceased survived for some time. From the place of occurrence he was taken near Peepal tree, from there he was taken on cot near the road and from road he was put in the jeep. In the jeep, he succumbed to the injuries. Therefore, it cannot be ruled out that when the deceased was lifted and was taken near the tree, from there to road, from there to jeep, broken ribs might have damaged lungs that proved fatal. In view of the above facts, in the first instance, there was dispute between the parties regarding land, the accused party attacked the deceased, head injuries were not grievous, chest injury and outer injuries were also not grievous, only ribs were fractured, which pierced into lungs that proved fatal, the deceased died on account of that, therefore, looking to the nature of injuries and the background of the dispute, it cannot be inferred from the above facts that the accused persons had attacked the deceased with intention to cause his death. However, the manner in which the accused persons attacked the deceased, it can safely be inferred that the accused persons had knowledge that the manner in which they attacked the deceased, they may likely to cause his death, therefore, offence against the accused persons under Section 304 Part-II of the IPC was made out. We are fortified in our view by the decision of the Apex Court in the matter of **Karam Singh vs. State of Punjab** reported in **1994 SCC (Cri) 64**. The facts of that case were that accused attacked Nahar Singh. In the process, he sustained lacerated wound on the head. There was no

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corresponding internal injury, as in the present case. There were contusions on the chest and injury Nos. 5 to 7 resulted in the fracture of the ribs which caused his death. The doctor in that case admitted that fracture of ribs could have in turn caused rupture of liver and spleen. The Court held that under these circumstances, it is difficult to hold that the appellant intended to cause injuries to the liver and the spleen which unfortunately proved to be fatal. The Court held that in the circumstances, offence punishable under Section 304 Part II of the IPC against the accused was made out. The facts of the present case is also similar to that case. Therefore, conviction and sentence imposed upon the accused persons under Section 302/34 of the I.P.C. cannot be sustained.

In the result, the appeal partly succeeds. Conviction and sentence imposed upon the accused/appellants under Section 302 read with Section 34 of the I.P.C. are set aside, instead thereof, each of the accused is convicted under Section 304 Part-II read with Section 34 of the IPC and sentenced to undergo R.I. for 7 years. As per the record, the accused persons are in detention since 26-8-2000 till date. The accused persons shall be entitled for set off of the above detention period against the sentence imposed upon them.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Sunil Kumar Sinha
Judge

Barve